

MACEY RESPONDS TO LUBET

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After a time, I suppose, academic writers become accustomed to having certain aspects of their work misconstrued. This has happened to me on occasion, sometimes as a result of what I believe to be a misunderstanding by a particular reader, but sometimes, I must concede, as a result of my own lack of clarity.

Thus I was not surprised to find that Steven Lubet, a clinician at Northwestern Law School, has misread my review¹ of Allan Bloom's book, *The Closing of the American Mind*.² What is both amusing and disconcerting about Mr. Lubet's rather petulant reaction to my Book Review is that he accuses me of precisely the intolerance against which I was inveighing in my Review. In other words, he interprets my plea for tolerance as an example of intolerance. How depressing.

The point of my Book Review was quite simple. It seemed to me then, as it does now, that Professor Bloom's perspective on American education is troubling because it is likely to result in a dangerous intolerance of academic diversity. I was making the basic point that one can have high academic standards without succumbing to Bloom's rigid, absolutist philosophical perspective.

Peering through a highly defensive lens, Mr. Lubet takes my remarks to be an attack on his domain—the world of clinical legal education. He appears to believe that I think that clinical education has no place in a top flight law school curriculum. This is not what I believe. I enthusiastically support clinical education. As I said in my Review, however, I think it is important that law school faculties think carefully about “such things as how much to emphasize skills courses and how much to emphasize traditional education and how much to emphasize non-traditional subjects like finance and philosophy.”³ Thus, Mr. Lubet really is misreading me when he claims that I think the issue of whether clinical education has a role in a law school curriculum is in doubt.

He is right, of course, that I singled out clinical education as a

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¹ Jonathan Macey, *Allan Bloom and the American Law School* (Book Review), 73 CORNELL L. REV. 1038 (1988).

² ALLAN BLOOM, *THE CLOSING OF THE AMERICAN MIND* (1987); see also Macey, *supra* note 1, at 1043.

³ Macey, *supra* note 1, at 1043.

source of concern. But my concern about clinical education is not that it is not a worthwhile endeavor, but that law schools appear unwilling to devote the resources necessary to monitor and control what takes place in the clinical setting. In my view, the problem of monitoring is greater in the clinic than in the classroom because it is far more difficult to evaluate the experience that students have in a clinical setting than it is to evaluate the experience that students receive in the classroom. Generally speaking, each student's clinical experience is unique and individual. Some students will be placed in an intellectually challenging and rewarding environment. Others will not. In addition, it is tempting for law school faculties to ignore the clinical component of the curriculum, particularly since law students rarely complain about undemanding courses.

Aside from monitoring, a second problem with clinical education is that the scope of students' clinical caseloads often is determined by political considerations. Local bar associations understandably are concerned about the prospect of law students offering free legal advice through legal clinics to their potential paying clients. And law schools are just as understandably concerned that a clinic with too broad a focus will alienate the local bar. Consequently, political considerations often dictate the substantive content of the clinical curriculum.⁴

My point here, and in my Book Review, is not that clinical teaching should be removed from the law school curriculum, but that it should be treated seriously, rather than ignored. Mr. Lubet reacted to my Review like a bureaucrat being threatened with deregulation. The vehemence and defensiveness of his response is curious. He himself admits that it is at least possible that "certain clinical courses are poorly taught, or that certain teachers demand less than rigorous analysis from their students."⁵ If he is willing to admit this, then it seems to me that we are in agreement about the need for implementing standards in this, as in other aspects of the curriculum.

As I said in my Review, the fact that law schools are part of university communities means that they have "the responsibility to distinguish, on the basis of quality . . . among the multitudinous voices that attempt to lay claim to the ears of our students."⁶ Clinical education is one such voice.

Along these lines, Mr. Lubet claims that it is paternalistic of me

⁴ While skills courses do not have the same monitoring and public relations problems as clinical courses, they are not as popular as clinical courses.

⁵ Steven Lubet, *Closed Minds and American Law Schools?* 75 CORNELL L. REV. 949, 956 (1990).

⁶ Macey, *supra* note 1, at 1042.

to suggest that law faculties should have a role in maintaining curricular quality.⁷ After all, he argues, if markets really work, then it is the students who take worthless courses who will be disadvantaged by the existence of such courses. But this ignores the fact that part of what law schools are "selling" to students is their relative advantage in evaluating curricular issues. In addition, this ignores the externalities of the law student's choice: if the law school turns out inferior graduates, *all* students suffer as the school's reputation declines. Both these factors argue in favor of greater faculty involvement in monitoring student choices.

Law schools have better information about the sorts of things that students should study before becoming lawyers. One of the things that law schools "sell" to their students is information about what one ought to do on the way to becoming a member of the legal profession. To say that law schools have a responsibility to provide guidance and directions to students in this regard is no more paternalistic than is the provision of medical advice by doctors to their patients.

To me the most interesting question raised by Mr. Lubet's twelve page comment on my eight page Book Review is why he found my Review so troubling. I think the answer lies in the fact that the place of clinical education in law school curricula is considered by many to be somewhat precarious. Perhaps if clinicians like Mr. Lubet were a bit less defensive the situation would improve.

⁷ Lubet, *supra* note 5, at 957.